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Amembassy RIO DE JANEIRO

June 8,

The Esquadrão da Morte (Death Squad)

Summary

In the last ten years over 800 murders with many characteristics in common have occurred in the major cities of Brazil. The basic similarities have been the "ritual" surrounding the killings and the fact that they are all unsolved. These brutal deaths have attracted widespread Brazilian and international press treatment and have been attributed to aptly named "death squads" (Esquadrões da Morte or EM). Although there are variations in the explanations of the death squad phenomenon, it is almost universally believed that these crimes are the work of off-duty policemen who, lacking confidence in the formal Brazilian legal system to control crime, band together in local vigilante groups to execute those identified as habitual and irredeemable criminals.

To date the various local, state and federal governments for the most part have reacted by looking the other way. On several occasions individual officials have stated that the Esquadrão would be investigated and destroyed. All such efforts have produced little beyond more press coverage.

The last several weeks have witnessed an upsurge in news about death squads. First there has been an ⁱⁿGENERAL ^{of the} CONSULATE UNITED STATES OF AMERICA

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in the number of victims found in the streets of Rio after a relatively quiet spell. Second, the Supreme Court refused habeas corpus to Sergio Fleury, the man thought of by many people as the symbol of the São Paulo Esquadrão, thus theoretically preparing the way for his prosecution on several murder charges. And last, the newspapers have begun another of their campaigns to demand that some action be taken. The following general history and description of the Esquadrão da Morte is intended to give a simple overview of the problem while it remains in its present form. It could quickly become even more complex.

Introduction

In the past decade, one of the recurring themes that from time to time has captured the imagination and headlines of the local and international press has been the alleged existence in Brazil of so-called "death squads." Each incident attributable either in fact or in the imagination of the reporter to the Esquadrão automatically has received extensive local press play (particularly in the mass-appeal papers), and several of the more spectacular multiple-victim killings have been reported by the international media.

The death squad is generally described and almost universally believed to be composed chiefly of off-duty policemen in the metropolitan areas who, unwilling to accept what they view as a legal system which stymies their best efforts to control crime and criminals, take the law into their own hands by summarily executing those they identify as "habitual criminals."

Various sub-theories extend this description. One is that the death squad is really a crude but effective tool of the establishment to keep the poorest segments of the urban population, principally the favela dwellers who are often thought to be "beyond the law" in their un-policed ghettos, afraid of venturing out and committing crimes against the middle and upper-classes. A second theory proposes that the Esquadrão murders are not the result of the good guys (policemen) eliminating bad guys (criminals beyond the normal grasp of the law). This hypothesis is that the killings result from either (a) internal battles within the underworld, principally over competition for territories of

narcotics or the local variation of the numbers racket (jogo de bicho), or (b) the efforts of dishonest police to keep the rackets under their personal control. Under these latter theories, the murders once committed are given the trappings of the "classical" Esquadrão ceremony, and thus put into the lightly-treated category of death squad executions. Other theories abound.

There are also various explanations of why so little has been done to investigate and bring a halt to these killings. Given the poor image of Brazil generated abroad by such recurrent stories of vigilantism, and given the GOB's professed concern with its poor foreign image derived in part from other allegations of repressive practices by its police forces, it is difficult to understand why the GOB would not energetically (1) attempt to discover if the Esquadrão does in fact exist, and (b) crush it if it does. Brazilian officialdom has adopted various postures vis-à-vis the Esquadrão problem. Their proponents fall roughly into the following categories: (1) those who deny its very existence by claiming all such stories are the fabrications of overimaginative and sensationalist-oriented newsmen who pin the death squad label on isolated and non-connected acts of violence; (2) those who accept the existence of the Esquadrão and the popular version of the forces behind it, but rationalize its existence as "justified" given the underdeveloped state of the police in Brazil and the cumbersome, excessively lenient, and often corrupt or incompetent Brazilian juridical system which is incapable of fighting the criminal elements spawned in today's urban centers; (3) others who deplore the Esquadrão but feel nothing can be done to fight it in face of its close official connections; and (4) those few who are attempting to battle and destroy the Esquadrão.

One might suspect that with the present degree of GOB control over the press, stories dealing with a subject with such potentially damaging impact on Brazil's image would be heavily censored by the authorities. Such is not the case. The following historical description was garnered almost exclusively from press sources. From those herein identified - The Jornal do Brasil, Correio da Manha, O Estado de São Paulo, et al - it can be seen that even the most responsible Brazilian papers have given in-depth and compre-

hensive coverage to the Esquadrão. It is our impression that none of the prestige papers treats the Esquadrão as anything other than a confirmed and describable fact. It should be kept in mind, however, that the lack of any solid official investigation into the EM has left the field open for journalists to employ their often well-developed imaginative and speculative powers when writing about the Esquadrão. The following account might therefore be exaggerated. Even if it is, it represents the most accurate description available to the Brazilian public and one that, in the absence of authoritative evidence to the contrary, is widely accepted as accurate.

Historical Summary

In 1958, the government of the State of Guanabara, concerned with rampant criminalism, gave carte blanche authority to delegado (equivalent to an American chief of detectives) Cecil Rocer to deal with the spiraling crime problem. General Amauri Kruel, then Chief of Police of the Federal District, created a special unit within the state Secretariat of Public Security to "deal in whatever way" with the bandits. Bodies of marginais (small-time hoodlums) began to appear on the streets of Rio, their deaths attributed to unknown authors (19 cases in total). Inquiries into these murders were never begun.

This first era of what was in time to become the Esquadrão da Norte ended when a detective killed a TV cameraman, mistakenly thinking that he was a bandit marked for death. The press and public outcry was enough to end the murders for several years.

It was not until 1964 that news of the EM again was reported in the papers. At that time, a small-time hoodlum who was assaulting and robbing in the North Zone of Rio killed Detective Milton Le Coq in an exchange with police. A price was put on the assassin's head and several groups of police banded together to capture him. The ensuing hunt resulted in the second step of the development of EM, the creation of the "Escuderie Le Coq."

The "Escuderie Le Coq" is a fairly open organization, with police members often posting its emblem in their precinct offices. The Correio da Manha estimated that under President Euclides Nascimento and Honorary President David Nasser (a pro-Government Rio journalist), the Escuderie at the present time has 4000 members in Brazil - 1000 in Guanabara, 500 in São Paulo, 150

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in Minas Gerais, 200 in Rio Grande do Sul, 50 in Pernambuco, and the rest scattered throughout the interior. It further states that of the 4000, 50% are police and the rest are judges, prosecutors, lawyers, military and journalists.

Crimes Attributable to Esquadrão

Since 1968 until today, more than 800 mysterious deaths have been attributed to the Esquadrão, 200 in Niteroi alone in a two-year period and 182 in a one-and-a-half year period in São Paulo - an average of two per week. All the crimes have had characteristics in common:

- (1) the victims are almost always marginais (small-time crooks, drug dealers, people on the fringe of the law);
- (2) the victims are all shot many times with large caliber weapons, and tied with nylon cords;
- (3) the bodies are left in deserted places in the early morning;
- (4) a sign with the EM symbol and phrases such as "I was a bandit" are left with the corpse;
- (5) calls are made to newspapers saying where the body can be found;
- (6) the police don't question any suspects and the case is closed for lack of evidence.

The Jornal do Brasil has described the enactment of a typical EM crime as follows:

"Those chosen to die are generally caught by the death squad in the street and taken to a place used as a hideout, or many times to the police station itself, where the suffering of the victim begins. Cigarette burns on the body, electric shocks in sensitive places, and a beating are the principle castigations in this phase.

Afterwards comes the final part, the placement of the victim in the trunk of a car which will take him to a quiet place. There the victim is tied by a cord and made to run, then his killers shoot. The man dies strangled and ridden with bullets. In order to complete the scene, the killers place a white cardboard sign with the design of a skull and crossbones and the chosen words of hate beside the initials EM - representing the symbol of the Escuderie Le Coq - saying that there lies a bandit."

In São Paulo, the victims of the Esquadrão have a further common characteristic. After the first deaths, all in revenge for deaths of policemen, the São Paulo Esquadrão appears to be dedicating itself to the elimination of drug dealers. Of the 143 deaths attributed to the Esquadrão through mid-1970, 120 were involved in the drug traffic.

In the first few years of activity, all signs left with victims were the same - the skull and crossbones and the initials EM. Since late 1969, however, new symbols have begun to appear with the bodies indicating the appearance of new groups emulating the original EM. Fatos e Fotos, a weekly magazine, charted the appearance of these new symbols and described the operation of the Esquadrão and splinter groups along geographic lines. The original Esquadrão operates in Guanabara, Rio de Janeiro, Espírito Santo, and São Paulo; O China (symbolized by a Fu Man Chu appearing Chinese) in Guanabara and Rio; Killing in Guanabara; and SOMERA (symbolized by a head covered with a lady's nylon stocking) in Espírito Santo.

The Esquadrão itself remains the strongest in terms of numbers of victims, extent of operation, and sophistication of organization. In both São Paulo and Rio, the repeated telephone calls to newspapers to announce the location of corpses and future victims have led to names being assigned to the feminine voices. In Rio, she is known as Rosa Vermelha, and in São Paulo, Lírio Branco.

The Brazilian press has not hesitated in linking the squad with the police (see Rio's A-178, of March 21, 1969). Each "hit"

is fully covered in the press under standard Esquadrão banner-lines, explicitly implicating the police. Editorial comment is frank, as witnessed by the following Jornal do Brasil editorial of November 1970:

"The Esquadrão da Morte is the fruit of a crisis of authority in the entire police apparatus in Brazil. In Rio, its elements are probably recruited from those same police who travel through the city in trucks, many times without lights, negligently manned; by police who appear to be vagabonds looking for a fight; arrogant beings who transgress all traffic laws. They who consider themselves to be above the law are those who should be the first to respect it in order to teach all to respect it."

High police and security officials continue to deny the participation of police in Esquadrão activities. The Superintendent of Police in the State of Rio considers the EM to exist but as "a Brazilian version of North American gangsters." The Secretary of Security for the State of Rio and the Superintendent of the State of Rio Civil Police are both adamant in refusing to agree that the EM exists, claiming its existence to be the product of a fertile public imagination.

Attempts to Deal with the Situation

800 bodies murdered by unknown authors, in circumstances never investigated, resulting in inquiries closed before they really opened, suggest more than fertile public imagination.

High-level state officials' refusal to consider the EM to be organized or to involve the police makes state justice efforts nearly impossible. One public prosecutor blamed the lack of progress on paltry police resources. Others blame the failure to investigate not on the lack of resources, but on the climate of fear generated by apparent official connivance and approval.

The demands of the press and the embarrassing number of unsolved crimes attributed to the Esquadrão finally prompted the Governor of the State of Rio to create a special commission

to deal with the EM. Established in April 1970, this three-man Special Investigative Commission was charged with examining cases attributed to the EM. The life of the Special Commission expired at the end of January 1971 without any progress being made. In its final report, the Commission attributed more than 400 crimes committed in the State of Rio in three years to the EM, with a suggestion for dealing with only one of them. It further stated that it found the homicide division "inefficient" and it "unjustifiable that it had solved so few crimes of unidentified victims."

After years of state inaction, the end of 1970 saw appeals for federal intervention such as this editorial from the Jornal do Brasil:

"It no longer helps to appeal to the state authorities. The federal police must intervene. There must be in the national security concept some way to protect the common security of our citizens."

After the murder of 11 marginais in São Paulo in July 1970 in reprisal for the killing of a policeman (reftel São Paulo 699, 7/24/70), Judge Nelson Fonseca requested federal intervention to deal with the EM. The Judge called EM crimes "crimes against the national security." He stated that the Esquadrão, composed of police, does exist, and accused police officials of being responsible for the difficulty in obtaining proof against the EM.

In August 1970, Justice Minister Buzaid, in response to a proliferation of these crimes and requests from certain officials, moved to prompt further action by state authorities against the Esquadrão. He threatened, in effect, to turn the matter over to the federal police (reftel Rio's 5575, 8/5/70).

Buzaid's threat seemed to spur state action for a short period. In several states, investigations were pursued and several accused were brought to trial. In Espírito Santo, a trial of police believed connected with the Esquadrão terminated without conviction. In the State of Rio de Janeiro, the trial of João da Silva Coelho, accused of belonging to the EM, ended on October 13, 1970, when he died of a heart attack while in prison. Two policemen, said to be members of the Esquadrão, were tried and convicted

of murder in São Gonçalo, State of Rio, on January 29, 1971 (see Rio A-46). Though this may aid in future progress of EM cases, they were tried and convicted for an isolated murder and not for being members of the Esquadrão, nor for committing the specific crime in their capacity as members.

The greatest amount of state action against the Esquadrão is occurring in São Paulo. Hélio Pereira Bicudo, a state prosecutor, was named to begin an investigation of the EM. He and Judge Nelson Fonseca have opened investigations of many cases, accused the police in several instances, and begun trial proceedings. One of these cases is that concerning the murder of 11 marginais in reprisal for the killing of a police investigator. In the brief presented by Hélio Bicudo, he stated that eight of the victims actually had been removed from custody in the Presídio Tiradentes prison to be killed. According to the O Estado de São Paulo, this was done with the knowledge of the prison director who later falsified documents to cover the event. The judge still hasn't decided whether or not to process the case.

Other investigations of Hélio Bicudo have borne some fruit. One of his processes against three policemen hopefully will move to the jury trial stage soon. They are to be tried under the penal code and are accused of belonging to the EM.

His second denunciation in October of 16 police in a 1968 Esquadrão murder is now in the phase of pre-trial defense testimony. A third denunciation by Bicudo (December 1970) of six policemen in the murder of a common crook involves Sergio Fleury, a São Paulo delegado who in many minds symbolizes police involvement in the EM. Fleury is a legendary figure in São Paulo police circles. He is held responsible for having masterminded the elimination of Brazil's number one terrorist, Carlos Marighella, in late 1969, and his successor, João Camara Ferreira, one year later. In answer to the death squad murder charge, Fleury asked that a writ of habeas corpus be applied by the Supreme Federal Tribunal in cases of persons charged with being members of the Esquadrão. A fourth denunciation by Bicudo (February 1971) also accuses Sergio Fleury, along with six other policemen, in the death of three drug dealers killed in December 1968. Fleury requested habeas corpus in this case too.

In early June, in what some observers judge to be a serious blow to the Esquadrão and the first evidence that the federal government no longer intends to look the other way, the Supreme Court denied Fleury's habeas corpus petitions. The criminal process can now proceed.

Jurisdictional Dispute

The decision by the Federal Supreme Court on the Fleury appeal was awaited with great interest in government circles. This was due primarily to the jurisdictional dispute raging between the office of the Federal Attorney General and the São Paulo State Attorney General. The federal officer considers there to be no clear indication of Fleury's guilt and that Bicudo's inquiries are based on an illegal premise. The State Attorney General upholds the legality of the function exercised by Bicudo, and that the case against Fleury contains clear and precise imputation of his crimes. The Supreme Court decision apparently supports the latter thesis.

Jurisdiction is further complicated by the favorable dispatch by the Judge Auditor of a petition by a military attorney which requests that all cases concerning the Esquadrão currently in process in courts of common justice be transferred to military jurisdiction. The Judge Auditor sent the request to the Supreme Federal Tribunal and suspended all cases in progress until the Supreme Court decides on that jurisdictional conflict. The question is whether crimes of the Esquadrão are common crimes to be judged under the civil penal code, and therefore in civil courts, or crimes against the national security, which require military processing.

COMMENT: Where the truth in all this lies is sometimes difficult to determine. It is a fact that at least eight hundred unsolved, and mostly uninvestigated, murders have occurred in the last few years which have been identified in the public mind as the work of the Esquadrão. For a story like the Esquadrão to have received such wide popular acceptance is certainly a comment on the Brazilian public image of its police, and a commentary on the entire criminal justice procedure as well. Brazilian lawyers willingly admit that the process of criminal justice is in a deplorable state. The courts have traditionally been overcrowded,

inefficient, and often arbitrary. Events in Brazil since the Revolution have added to these defects by placing the entire judicial branch in an even more inferior posture vis-à-vis the executive branch than it traditionally was. The disruption of due process of law incorporated in the institutional act concept, particularly IA-5's exclusion from juridical review of all actions under it and other IA's, could only have the effect of undermining the public's, and their law enforcement's, confidence in the judiciary.

The inability of the judiciary, when faced with the staggering number of unsolved murders attributed to the death squads, to demand and receive full executive support in investigations suggests serious inter-branch government problems. The apparent ability of the states to implicitly defy the federal Minister of Justice when he attempted to force them to employ the state police apparatus against the EM also suggests an inherent lack of discipline within the system. The jurisdictional dispute among the competing state, federal, and military judiciaries further weakens the process. With all the inherent problems of the system, it is perhaps easy to understand the motivation of members of the Esquadrão for substituting their own, more direct concept of law enforcement.

Understanding the GOB reaction to date is somewhat more difficult. It can be argued that the present government, overwhelmingly concerned as it is with the problems of internal security and the elimination of a terrorist threat, does not choose to do anything that would demoralize or handicap its security forces. If this is the reason behind the policy of official inaction, it is not without long-term risks.

Until now the vast majority of the victims, outside of an occasional case of mistaken identity, have been from the poorest classes, those with the least ability or predilection to protest. It is easy to conceive of the practitioners of this type of vigilantism, becoming ever more convinced of their being above the law, branching out and executing others for payment, spite, or any of a multitude of reasons. Perhaps it will only be when victims begin appearing who are no longer from among the voiceless classes, but who have access to channels of complaint, that a serious effort will be made to curb the Esquadroes.

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